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EXAMINER
GODENSCHWAGER, PETER F

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Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte XIANGYANG LI

Appeal 2016-000551
Application 11/447,581[1]
Technology Center 1700

Before CATHERINE Q. TIMM, KAREN M. HASTINGS, and MICHAEL P. COLAIANNI, *Administrative Patent Judges*.

COLAIANNI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from the non-final rejection of claims 2, 3, 5–7, 10, 11, 14, 15, and 17. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

We AFFIRM.

Appellant's invention is directed to a stabilizer composition that stabilizes a polymer against hydrolysis (Spec. 1:8–10). The stabilizer composition contains carbodiimide and a costabilizer of aluminum oxide or aluminum oxyhydroxide (Spec. 1:8–10, 2:23–26).

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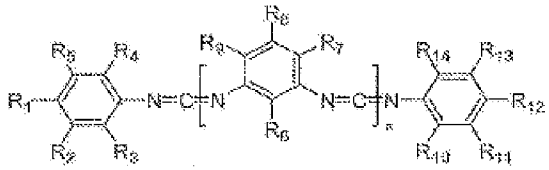
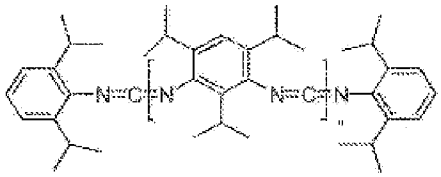
[1] The real party in interest is identified as Bayer MaterialScience LLC (Br. 3). As noted by the Examiner, this application was the subject of Appeal 2010-012553 in which the Board affirmed the Examiner's rejections (Ans. 10; prior Board Decision dated March 1, 2012).

Claim 3 is illustrative:

Claim 3. A hydrolytic stabilizer mixture for stabilizing a polymeric material system against hydrolysis, the mixture comprising as component i) at least one carbodiimide selected from the group consisting of



where $R^1 - R^{14}$ independently one of the others denote a member selected from the group consisting of hydrogen, halogen, aliphatic, aromatic, cycloaliphatic and alkoxy radicals and n is 1 to 500



where n is 5 to 50, and as component
ii) co-stabilizer selected from the group consisting of aluminum oxide and aluminum oxyhydroxide, wherein the polymeric material system is one selected from the group consisting of a polyamide, a blend of polycarbonate and polyester, or a blend of polycarbonate and a rubber modifier.

Appellant appeals the following rejection:

Claims 2, 3, 5–7, 10, 11, 14, 15, and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Wit (US 2006/0074155 A1; published Apr. 6, 2006) in view of Rogers (US 5,804,626; issued Sept. 8, 1998).

Appellant's arguments focus on subject matter common to independent claims 3, 10, and 17. We select claim 3 as representative of the

group with the remaining claims standing or falling with our analysis of the rejection of claim 3.

Appellant argues that Wit does not teach combining boehmite and carbodiimide as part of a stabilizer (Br. 12). Appellant contends that the Examiner's rejection appears to be based upon the faulty premise that a lack of teaching to do something is a reason to make such a modification. *Id.* Appellant does not specifically contest the Examiner's findings or conclusions regarding the substitution of Rogers' carbodiimide as the carbodiimide in Wit's composition (Br. 12–13; Ans. 3). Accordingly, the focus of our decision is on the Examiner's analysis regarding Wit.

We have fully considered Appellant's arguments and find ourselves in agreement with the Examiner's positions stated on pages 2–12 of the Answer, which we adopt as our own.

Regarding Appellant's argument that Wit does not teach an embodiment that combines boehmite and carbodiimide, Wit teaches that the polyester composition includes "at least one compound selected from a mineral-like stabilizer and an organic compound comprising at least one functional group" (Wit ¶ 5). The plain language of Wit teaches that the polyester composition may include both a mineral-like stabilizer and an organic compound. Wit further teaches that the mineral-like stabilizer may be boehmite and the organic compound may include a carbodiimide functional group (¶¶ 5, 16, 43, 44). Wit further teaches that the preferred amount of mineral-like stabilizer is between 0.5 to 5% by weight of the amount of polyester and the preferred amount of organic compound is between 0.5 to 10% by weight of the polyester (¶ 47). In other words, Wit teaches that both a mineral-like stabilizer and an organic compound are part

of the composition. The Examiner finds that the lists of the mineral-like stabilizers and organic compounds are small, such that one of ordinary skill in the art would have immediately envisaged the selection of boehmite as the mineral-like stabilizer and carbodiimide as the organic compound (Ans. 11–12). Appellant does not dispute this finding of the Examiner.

For the above reasons and on this record, we affirm the Examiner's rejection.

DECISION

The Examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED